

## FCC MAIL SECTION

Before the  
Federal Communications Commission  
Washington, D.C. 20554

DISPATCHED BY

MM Docket No. 92-23

In the Matter of

Amendment of Section 73.202(b), RM-7900  
Table of Allotments, RM-7989  
FM Broadcast Stations.  
(Hazard, Hyden, Jackson,  
and London, Kentucky)<sup>1</sup>

## ORDER TO SHOW CAUSE

Adopted: September 28, 1992; Released: October 26, 1992

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making and Order to Show Cause*, 7 FCC Rcd 1372 (1992), issued in response to a petition for rule making filed by Ethel Huff ("petitioner"), permittee of Station WYGE(FM), Channel 223A, London, Kentucky, requesting the substitution of Channel 222C3 for Channel 223A at London, Kentucky, and the modification of her construction permit (BPH-880817MH) to specify operation on the higher class channel. In order to accommodate the upgrade at London, petitioner also requested the substitution of Channel 223A for Channel 284A at Hazard, Kentucky, and the modification of Station WJMD(FM)'s license to specify Channel 223A; and the substitution of Channel 284A for Channel 222A at Hyden, Kentucky, and the modification of Station WZQQ(FM)'s license to specify Channel 284A (RM-7900). In response to the *Notice*, petitioner filed a counterproposal requesting the substitution of Channel 222C2 for Channel 223A at London, Kentucky, and the modification of her construction permit to specify operation on Channel 222C2. In order to accommodate this proposal, she also requested the substitution of Channel 250A for Channel 222A at Hyden, Kentucky, and the modification of Station WZQQ(FM)'s license to specify Channel 250A; and the substitution of Channel 293A for Channel 249A at Jackson, Kentucky, and the modification of Station WJSN(FM)'s license to specify Channel 293A.<sup>2</sup> Hazard Broadcasting Services, Inc. ("HBSI"), licensee of Station WJMD(FM), Hazard, Kentucky, filed opposing comments and reply comments.<sup>3</sup> Huff filed reply comments and comments restating her intention to apply for Channel 222C2, if allotted.

2. Huff in her counterproposal states that the the substitution of Channel 222C2 for Channel 223A at London, would provide additional reception service to nearly a quarter million persons in more than an 8,500 square mile

area, which represents an increase of 78% in area and 92% in population above those that would have resulted from the C3 upgrade. Huff also states that the Class A substitutions will enable Station WJSN(FM), Jackson, and Station WZQQ(FM), Hyden, to operate as 6 kilowatt facilities, as they are both precluded from operating as 6 kilowatt facilities on their present channels by short-spacings. Huff states that she will reimburse the licensees of Stations WJSN(FM) and WZQQ(FM) for all reasonable costs as required by Commission policy.

3. We believe the public interest would be served by the consideration of Huff's counterproposal to substitute Channel 222C2 for Channel 223A at London, Kentucky, since it could provide the community with a wide coverage area FM service. In order to proceed with Huff's counterproposal in this proceeding, we must issue an *Order to Show Cause* to Intermountain Broadcasting Co., Inc., licensee of Station WJSN(FM), Channel 249A, Jackson, Kentucky, seeking comments as to why its license should not be modified to specify operation on Channel 293A instead of Channel 249A, as requested by Huff. This *Order to Show Cause* does not provide additional opportunity to comment on the merits of the proposal.

4. IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Intermountain Broadcasting Co., Inc., licensee of Station WJSN(FM), Channel 249A, Jackson, Kentucky, SHALL SHOW CAUSE why its license should not be modified to specify operation on Channel 293A in lieu of Channel 249A.

5. Pursuant to Section 1.87 of the Commission's Rules, Intermountain Broadcasting Co., Inc., may, not later than **December 17, 1992**, file a written statement showing with particularity why its license should not be modified as proposed in the *Order to Show Cause*. The Commission may call on Intermountain Broadcasting Co., Inc., to furnish additional information. If Intermountain Broadcasting Co., Inc., raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Intermountain Broadcasting Co., Inc., will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

6. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND by Certified Mail, Return Receipt Requested, a copy of this *Order* to the following:

William P. Bernton  
2 Mill Lane  
Yarmouth Port, MA 02675  
(Attorney for Ethel Huff)

Intermountain  
Broadcasting Co., Inc.  
1024 College Avenue  
Jackson, KY 41339  
(Licensee of Station  
WJSN(FM))

<sup>1</sup> The community of Jackson, Kentucky, has been added to the caption.

<sup>2</sup> Public Notice of the counterproposal was given on May 14,

1992.

<sup>3</sup> These comments will be considered in the *Report and Order* in this proceeding.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

#### FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau